

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DAVID BRIAN MORGAN,)
)
Petitioner,)
)
v.) **No. CIV-23-1109-R**
)
DAVID ROGERS,¹)
)
Respondent.)

ORDER

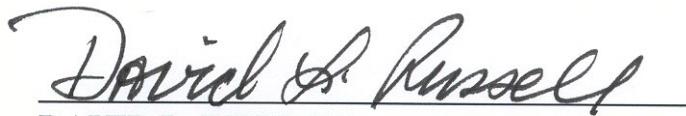
Before the Court is the Report and Recommendation of United States Magistrate Judge Shon T. Erwin entered on January 12, 2024 [Doc. 9]. No objection to the Report and Recommendation was filed by January 29, 2024, and no extension of time in which to object has been sought or granted. Therefore, the Report and Recommendation of the Magistrate Judge is ADOPTED in its entirety. The Petition for Writ of Habeas Corpus [Doc. 1] is DISMISSED for lack of jurisdiction as a successive habeas petition without prior authorization from the Tenth Circuit. *See* 28 U.S.C. § 2244(b)(3)(A). The Court declines to transfer the Petition to the Tenth Circuit. Additionally, the Petition's dismissal renders the Motion for Leave to Proceed *in forma pauperis* [Doc. 2] MOOT.

Rule 11 of the Rules Governing Section 2254 Cases requires a district court to issue or deny of Certificate of Appealability upon entering a final adverse order. "When the district court denies a habeas petition on procedural grounds without reaching the

¹ The Court lists the Respondent as substituted by the Magistrate Judge in his Report and Recommendation. Doc. 9 at 1 n.1.

prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). It is quite apparent Petitioner's latest attempt at habeas relief was procedurally unsound, and therefore, the Court declines to issue a certificate of appealability.

IT IS SO ORDERED this 6th day of February, 2024.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE